

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:

FRANCHELL WATSON,

Debtor.

CASE NO. BK 09-82110
CHAPTER 13

**MOTION FOR RELIEF
FROM AUTOMATIC STAY**

COMES NOW U.S. Bank, N.A., its Successors and/or Assigns (hereinafter “U.S. Bank”) a secured creditor of Debtor Franchell Watson, and hereby moves the Court for an Order granting relief from the Automatic Stay, pursuant to 11 U.S.C. § 362(d)(1), and in support of said Motion shows to the Court as follows:

1. That Debtor filed her Petition for Relief under Chapter 13 of the United States Bankruptcy Code August 11, 2009.

2. That the Court has jurisdiction over this matter pursuant to 11 U.S.C. §362.

3. That on or about December 31, 2007, Debtor executed and delivered her Note in writing to Bank of the West in the original principal amount of \$96,425.00.00 plus interest as it accrues at the rate of 3.67% per annum. A copy of said Note is attached hereto and marked as Exhibit “1”.

4. That as security for said Note, on or about December 31, 2007, Debtor executed and delivered to Bank of the West as Lender and Mortgage Electronic Registration Systems, Inc., as nominee for Lender and Lender’s successors and assigns (MERS) as Beneficiary, in writing her Deed of Trust wherein Debtor conveyed to MERS the following described real property commonly known as 951 N. 28th Avenue, Omaha, Nebraska, and legally described as follows:

Lot 5, The Highlander First Addition, an Addition to the City of Omaha, as Surveyed, Platted and Recorded in Douglas County, Nebraska.

A copy of said Deed of Trust is attached hereto and marked as Exhibit "2".

5. That the Deed of Trust was assigned by Assignment executed April 14, 2009, from MERS in favor of U.S. Bank, N.A. A copy of said Assignment is attached hereto and marked as Exhibit “3”.

6. That the Debtor’s Chapter 13 Plan generally provides for payment of U.S. Bank’s claim by paying the pre-Petition arrearage through her Chapter 13 Plan and by paying the regular

monthly mortgage payments directly to U.S. Bank as these payments ordinarily come due beginning with the first due date after the case is filed.

7. That the Debtor's Chapter 13 Plan was confirmed by the Court on or about October 8, 2009.

8. That the Debtor has defaulted under the terms of her confirmed Chapter 13 Plan by failing to make her post-Petition payments directly to U.S. Bank for the months of September 2009 through January 2010, with a current delinquency of \$3,014.58, plus attorney fees and costs incurred in filing this Motion.

9. That the total unpaid principal balance now due and owing under the terms of said Note and Deed of Trust is \$95,833.13.

10. That due to the Debtor's failure to make her post-Petition payments directly to U.S. Bank for the months of September 2009 through January 2010, Debtor is in violation of her confirmed Chapter 13 Plan, and U.S. Bank is entitled to relief from the Automatic Stay pursuant to 11 U.S.C. §362(d)(1).

11. That U.S. Bank requests that this Court waive the 10-day stay set forth in Bankruptcy Rule 4001(a)(3).

WHEREFORE, U.S. Bank, N.A., its Successors and/or Assigns, a secured creditor of Debtor Franchell Watson, moves the Court for an Order granting relief from the Automatic Stay pursuant to 11 U.S.C. §362(d)(1), to allow it to exercise its rights under the Note and Deed of Trust and applicable state and other non-bankruptcy law, to allow it to foreclose its security interest in the real estate commonly known 951 N. 28th Avenue, Omaha, Nebraska, and legally described as follows:

Lot 5, The Highlander First Addition, an Addition to the City of Omaha, as
Surveyed, Platted and Recorded in Douglas County, Nebraska,

to allow it to commence proceedings for possession of the real estate after the foreclosure sale, if necessary, to allow it to offer, negotiate, enter into and/or accept any potential forbearance agreement, loan modification, refinance agreement, short sale agreement, deed-in-lieu of foreclosure or other loan workout or loss mitigation agreements, to join all necessary parties, for an Order waiving the 10-day stay set forth in Bankruptcy Rule 4001(a)(3), and for such other and further relief as the Court deems just and equitable.

DATED this 11th day of January, 2010.

U.S. BANK, N.A., its Successors and/or Assigns,
a Secured Creditor,

By: /s/ Matthew E. Eck

For: LOCHER PAVELKA DOSTAL
BRADDY & HAMMES, LLC
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Matthew E. Eck

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2010, I electronically filed the foregoing Motion for Relief from the Automatic Stay with the Clerk of the United States Bankruptcy Court for the District of Nebraska using the CM/ECF system which sent notification of such filing by electronic mail to John T. Turco, Debtor's Attorney; Kathleen Laughlin, Chapter 13 Trustee; and Patricia Fahey, U.S. Trustee, and I hereby certify that I have mailed by United States Mail, postage prepaid, the foregoing to the following non CM/ECF participants:

DEBTOR
Franchell Watson
951 N. 28th Avenue
Omaha, Nebraska 68131

/s/ Matthew E. Eck